JAN 14 1960
JAMES R. BROWNING, C

No. 645

In the Supreme Court

of the United States

OCTOBER TERM, 1959

WILBUR J. SMITH; LONGVIEW TUGBOAT COMPANY, a Washington corporation; ELMER DANIELSEN, dba Puget Island Ferry; ESSON H. SMITH, dba C. T. SMITH & SON,

vs.

Appellants,

COLUMBIA COUNTY, OREGON, and M. R. CALHOUN as Sheriff of Columbia County; MARION COUNTY, OREGON, and DENVER YOUNG as Sheriff of Marion County; YAMHILL COUNTY, OREGON, and W. J. "BILL" JONES as Sheriff of Yamhill County; MULTNOMAH COUNTY, OREGON, and TERRY D. SCHRUNK as Sheriff of Multnomah County; CLACKAMAS County, OREGON, and FRED REAKSECKER as Sheriff of Clackamas County; CLATSOP COUNTY, OREGON, and PAUL KEARNEY as Sheriff of Clatsop County; WASCO COUNTY, OREGON, and HAROLD SEXTON as Sheriff of Wasco County; HOOD RIVER COUNTY, OREGON, and RUPERT L. GILLMOUTHE as Sheriff of Hood River County; CARL W. CHAMBERS, ROBERT D. MacLEAN and RAY SMITH, constituting the State Tax Commission of the State of Oregon,

Appellees.

On Appeal from the Supreme Court of the State of Oregon.

JURISDICTIONAL STATEMENT

ROBERT T. MAUTZ,
WILLIAM H. KINSEY,
Tenth Floor, Board of Trade Building,
Portland 4, Oregon,
JOHN F. McCARTHY,
National Bank of Commerce Building,
Longview, Washington,
Attorneys for Appellants.
ROBERT Y. THORNTON,
Attorney General,
THEODORE W. deLOOZE,
Assistant Attorney General,
Salem, Oregon,
Attorneys for Appellees.

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 1-60

INDEX

Page

Table of Citations ii

Jurisdictional Statement 1

Citation to Opinion Below 2

Jurisdiction 2

Questions Presented 2

Constitutional and Statutory Provisions Involved 5

Statement 5

The Questions Are Substantial 9

1. Oregon Admission Act 11
2. Operating Incidence of the Oregon Tax Is Based on Interstate Commerce 14
3. The Oregon Tax Discriminates Against Interstate Commerce 19

Appendix A 23

Opinions and Decrees of Courts Below

1. Memorandum Opinion of Marion County Court 23
2. Opinion of Oregon Supreme Court 31
3. Decree of Marion County Court 59
4. Decree of Oregon Supreme Court 61

Appendix B 63

Constitutional and Statutory Provisions

1. U. S. Constitution 63
2. Federal Statutes 63
3. Oregon Statutes 64

TABLE OF CITATIONS

Page

CASES

Cardwell v. American Bridge Co., 113 U.S. 205, 5 S. Ct. 423, 28 L. Ed. 959 (1885) ..... 13(fn)

Central Greyhound Lines v. Mealey, 334 U.S. 653, 68 S. Ct. 1260, 92 L. Ed. 1633 (1948) ..... 17(fn)

Cornell Steamboat Co. v. United States, 321 U.S. 634, 64 S. Ct. 768, 88 L. Ed. 978 (1944) ..... 17(fn)

Gloucester Ferry Co. v. Pennsylvania, 114 U.S. 196, 5 S. Ct. 836, 29 L. Ed. 158 (1884) ..... 16(fn)

Hamilton v. Vicksburg, S. & P. R., 119 U.S. 280, 7 S. Ct. 206, 30 L. Ed. 393 (1886) ..... 14(fn)

Harman v. Chicago, 147 U.S. 396, 13 S. Ct. 306, 37 L. Ed. 216 (1893) ..... 17(fn)

Helson v. Kentucky, 279 U.S. 245, 49 S. Ct. 279, 73 L. Ed. 683 (1929) ..... 16(fn)

Higman Towing Co. v. Cocreham, 70 F. Supp. 628 (E.D. La. 1947), affirmed 165 F.2d 789 (5th Cir. 1948) ..... 12(fn)

Huse v. Glover, 119 U.S. 543, 7 S. Ct. 313, 30 L. Ed. 487 (1886) ..... 14(fn)

Memphis Steam Laundry Cleaner v. Stone, 342 U.S. 389, 72 S. Ct. 424, 96 L. Ed. 436 (1952) ..... 21(fn)

New York ex rel Cornell Steamboat Co. v. Sohmer, 235 U.S. 549, 35 S. Ct. 162, 59 L. Ed. 355 (1915) ..... 17(fn)

Northwestern States Portland Cement Co. v. Minnesota; Williams v. Stockham Valves and Fittings, Inc., 358 U.S. 450, 79 S. Ct. 357, 3 L. Ed. 2d 421 (1959) 10, 17

Pittsburgh & S. Coal Co. v. Louisiana, 156 U.S. 590, 15 S. Ct. 459, 39 L. Ed. 544 (1895) ..... 13(fn)

TABLE OF CITATIONS (Cont.)

Page

Pollard's Lessee v. Hagan, 3 How. 212, 11 L. Ed. 565 (1844) ..... 12(fn)

Railway Express Company v. Virginia, 358 U.S. 434, 79 S. Ct. 411, 3 L. Ed. 2d 450 (1959) 17, 19, 22

Reeves v. Island Creek Fuel & Transportation Co., 313 Ky. 400, 230 S.W. 2d 294 (1950), certiorari denied 340 U.S. 853, 71 S. Ct. 82, 95 L. Ed. 625 (1950) ..... 14(fn), 18(fn)

Smith v. Columbia County, 68 Or. Adv. Sh. 1071, 341 P.2d 540 (1959) ..... 2, 6, 9(fn), 12, 15

Spector Motor Service v. O'Connor, 340 U.S. 602, 71 S. Ct. 508, 95 L. Ed. 573 (1951) ..... 17(fn)

Willamette Iron Bridge Co. v. Hatch, 125 U.S. 1, 8 S. Ct. 811, 31 L. Ed. 629 (1887) ..... 12, 14(fn)

Wilmington Transp. Co. v. Railroad Commission, 236 U.S. 151, 35 S. Ct. 276, 59 L. Ed. 508 (1914) ..... 17(fn)

TABLE OF CITATIONS (Cont.)

Page

U. S. CONSTITUTION AND STATUTES

Art. I, Sec. 8, Clause 3 (U. S. Constitution) 5
Art. I, Sec. 8, Clause 18 (U. S. Constitution) 5

Amendment XIV, Sec. I (U. S. Constitution) 5

Oregon Admission Act, 11 Stat. 383 (1859)
Vol. 5, Oregon Revised Statutes, Sec. 2, p. 1079
..... 3, 5, 10

28 U.S.C. Sec. 1257(2) 2

OREGON STATUTES

Oregon Laws 1949, Chapter 405 ..... 3, 5, 6, 7, 15(fn)
Oregon Laws 1949, Chapter 413 ..... 3, 5
Oregon Laws 1949, Chapter 414 ..... 3, 6, 7
Oregon Laws 1941, Chapter 440, Secs. 12 and 14 5

O.C.L.A. 110-101 5
O.C.L.A. 110-103 5
O.C.L.A. 110-312 5
O.C.L.A. 110-505 ..... 11(fn)
O.C.L.A. 110-513 ..... 5, 7, 15(fn)

No.....

In the Supreme Court

of the United States

OCTOBER TERM, 1959

WILBUR J. SMITH; LONGVIEW TUGBOAT COMPANY, a Washington corporation; ELMER DANIELSEN, dba Puget Island Ferry; ESSON H. SMITH, dba C. T. SMITH & SON,

vs. *Appellants,*

COLUMBIA COUNTY, OREGON, and M. R. CALHOUN as Sheriff of Columbia County; MARION COUNTY, OREGON, and DENVER YOUNG as Sheriff of Marion County; YAMHILL COUNTY, OREGON, and W. J. "BILL" JONES as Sheriff of Yamhill County; MULTNOMAH COUNTY, OREGON, and TERRY D. SCHRUNK as Sheriff of Multnomah County; CLACKAMAS County, OREGON, and FRED REAKSECKER as Sheriff of Clackamas County; CLATSOP COUNTY, OREGON, and PAUL KEARNEY as Sheriff of Clatsop County; WASCO COUNTY, OREGON, and HAROLD SEXTON as Sheriff of Wasco County; HOOD RIVER COUNTY, OREGON, and RUPERT L. GILLMOUTHE as Sheriff of Hood River County; CARL W. CHAMBERS, ROBERT D. MacLEAN and RAY SMITH, constituting the State Tax Commission of the State of Oregon, *Appellees.*

On Appeal from the Supreme Court of the State of Oregon.

JURISDICTIONAL STATEMENT

Appellants appeal from the decree of the Supreme Court of the State of Oregon, entered on June 17, 1959, affirming the decree of the Circuit Court of the State of Oregon for the County of Marion, and submit this statement to show that this Court has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the Supreme Court of the State of Oregon is reported in 68 Or. Adv. Sh. 1071, 341 P.(2d) 540 (1959). The opinion of the Circuit Court of the State of Oregon for the County of Marion is not reported. Copies of the opinions and decrees of the courts below are attached hereto as Appendix A.

JURISDICTION

The judgment and decree of the Supreme Court of the State of Oregon was entered June 17, 1959 (R222); Notice of Appeal to the Supreme Court of the United States was filed in the Supreme Court of the State of Oregon September 15, 1950 (R1) and the time within which the appellants must docket the within case and file the record with the Clerk of the Supreme Court of the United States was enlarged to and including the 15th day of January, 1960. This is a suit to declare void and enjoin enforcement of a state statute as contrary to the constitution and laws of the United States. The jurisdiction of this Court is invoked under 28 U.S.C., Sec. 1257 (2).

QUESTIONS PRESENTED

1. When Congress has preempted an area of interstate commerce through a valid enactment under the Commerce Clause of the United States Constitution to the extent accomplished by the below-quoted portion of the Oregon Admission Act:

> "That the said State of Oregon shall have concurrent jurisdiction on the Columbia and all other rivers and waters bordering on the said State of Oregon, so far as the same shall form a common boundary to said State, and any other State or States now or hereafter to be formed or bounded by the same; *and said rivers and waters, and all the navigable waters of said State, shall be common highways and forever free, as well as the inhabitants of said State, as to all other citizens of the United States, without any tax, duty, impost, or toll therefor.*" (Italics supplied) 11 Stat. 383 (1859), 5 ORS, Sec. 2, p. 1079.

can the State of Oregon impose a purported property tax* upon tangible and intangible property of appellant water transportation companies where the applicability of the tax is expressly conditioned upon appellants being

> ". . . engaged in the business of transporting freight or passengers for hire upon the rivers in or adjoining the State of Oregon."

or, is such purported property tax invalidated because the essential "operating incidence" of the tax is appellants' engaging in the business of transporting for hire upon the rivers, which operating incidence is well within the area of commerce sanctified by the above quoted portion of the Oregon Admission Act declaring the rivers and navigable waters of the State as common highways forever free, without any tax, duty, impost or toll?

2. Even if the subject tax as applied to plaintiffs is a true ad valorem tax, does the tax fall within the ban of the above-quoted portion of the Oregon Admission Act?

---

* Chapters 405, 413 and 414 of Oregon Laws 1949, and the laws of which they are amendatory.

3. Does the subject tax violate the Commerce Clause of the United States Constitution apart from, and irrespective of, the Oregon Admission Act?

4. If appropriate answer to any of the foregoing questions does not invalidate the subject tax irrespective of discrimination against interstate commerce, then is the subject tax invalidated by the Commerce Clause (either alone or as augmented by the Oregon Admission Act) because of the discrimination resulting from the fact that plaintiff water transportation companies are taxed upon their intangible as well as their tangible property at a required valuation of 100% of true cash value, in contrast to the following Oregon tax situation applicable to others:

> (a) The Oregon general property tax applicable to most taxpayers in Oregon (including most intrastate businesses) subjects only tangible property, and not intangible property, to tax at required valuations of 100% of true cash value.
>
> (b) The Oregon property taxation of watercraft using the Columbia River and tributaries (other than watercraft owned by water transportation companies such as appellents, does not apply to the intangible property of the owners, and the valuation of watercraft is limited in certain cases to 10% and even to 1% of the true cash value, and some watercraft are completely exempt from the property tax.

5. There is also the question as to whether the purported property tax applicable to appellants violates the equal protection requirement of the 14th Amendment of the United States Constitution when considered alone or in conjunction with the Commerce Clause, but such

question is secondary inasmuch as an answer to any of the questions in favor of appellants under the Commerce Clause or Oregon Admission Act will dispose of the controversy in accordance with appellants' primary contentions that the subject tax is invalidated by the Commerce Clause or Oregon Admission Act regardless of whether the tax classification might be valid under the Equal Protection Clause alone.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved are:

(a) U. S. Constitution, Article 1, Section 8, Clause 3 and 18, Amendment XIV, Section 1,

(b) Federal Statutes: Oregon Admission Act, 11 Stat. 383, Volume 5, Oregon Revised Statutes, Section 2, page 1079,

(c) Oregon Statutes: Oregon Laws 1949, Chapters 405, 413 and 414; Oregon Laws 1941, Chapter 440, Sections 12 and 14; O.C.L.A. 110-101, 110-103, 110-312, 110-513.

The above constitutional provisions and statutes are printed in Appendix B below.

STATEMENT

The State of Oregon has imposed upon Appellants a tax measured by the value of their property having a situs in the state. Such tax is imposed upon:

> "Water transportation companies engaged in the business of transporting freight or passengers for hire upon the rivers in or adjoining the State of Oregon." Sec. 1, par. 14, Chapter 414, Oregon Laws 1949.

The transporting of freight or passengers for hire upon the rivers in or adjoining the State of Oregon is a condition to application of the tax to appellant water transportation companies. The Supreme Court of Oregon held that the above quoted portion of the Oregon law imposing the tax constitutes a separate classification for purposes of taxation, 68 Or. Adv. Sh. at 1085, 341 P.(2d) at 549, and that the class upon which the tax is imposed is restricted to those exclusively engaged in river traffic. 68 Or. Adv. Sh. at 1088, 341 P.(2d) at 550. Due to such classification the tax is not imposed upon water transportation companies operating as private carriers rather than carriers for hire on the rivers, or upon private carriers or for hire carriers using the rivers as well as other navigable waters.

The subject tax is imposed upon 100% of the assessed value of certain tangible and intangible property of the water transportation companies, and is apportioned between Oregon and other jurisdictions. A separate and distinct tax is imposed upon the vessels of companies which engage in the private transportation of passengers or freight on Oregon rivers. This tax is assessed at the full cash value of tangible property only. Still another tax is imposed upon certain vessels which are registered or enrolled in the State of Oregon

at the rate of 10% of their true cash value. Finally, ships registered in Oregon and engaged in the inter-coastal or foreign trade are assessed at 1% of their true cash value. Certain other vessels are exempted from tax. Section 2, Chapter 405, Oregon Laws 1949.

The tax is levied and apportioned in such a manner that only those vessels and that real property actually *used* in the operation of the "water transportation company" is assessed. Also, it is mandatory that the state impose a tax upon the franchises and special franchises of such companies, regardless of whether those franchises or special franchises authorize the conduct of interstate business. The "property" taxed "does not include * * * real estate * * * which is not * * * in use in the operation of its * * * business," and includes "the watercraft * * * and other personal property * * * as is used partly within and partly without the state * * * ." The tangible property of appellants in Oregon not connected with the transportation for hire on the rivers of Oregon is separately assessed by the county in which it is located under the general property tax. The property of appellants in states other than Oregon and not used in its business as a "water transportation company" is excluded in valuing the entire business of appellants prior to apportionment. Section 1, Paragraph 14, Chapter 414, Oregon Laws 1949; Section 2, Paragraph 1, and Sections 3 and 4, Chapter 405, Oregon Laws 1949; and O.C.L.A. 110-513.

Each of the appellants herein owns and operates vessels and, in some cases, real property in the conduct of

their business as interstate carriers on the Columbia River and its tributaries (R 27). The appellant, Elmer Danielsen, dba Puget Island Ferry, operates a ferryboat on the Columbia River between Oregon and Washington. The remaining appellants transport freight on an on-call basis between various points in the State of Oregon and various points in the State of Washington on the Columbia River and its tributaries (R 69). The appellant, Longview Tugboat Company, is a Washington corporation and the other individual appellants, with the exception of Wilbur Smith, admittedly are Washington residents. There exists a dispute between the parties as to the residence of Wilbur J. Smith. This dispute has not been resolved by either of the lower courts (R 69).

The appellees contend that the above tax may be assessed, levied upon and collected from appellants regardless of the interstate character of their businesses (R 23, 27).

The appellants filed this suit in the Circuit Court of the State of Oregon for the County of Columbia, which suit was subsequently removed to the Oregon Circuit Court for the County of Marion, requesting that the court declare such tax void and unenforceable and enjoin the appellees from seizing, restraining or levying upon any of the tugs, barges or vessels of the appellants, or otherwise attempting to enforce collection of the tax on water transportation companies for the year 1950 and years subsequent thereto. The appellants, in the original complaint, raise the issue that the statutes by which the Oregon State Tax Commission attempted to

levy the above-mentioned tax and by which the appellee county attempted to collect the said tax were unconstitutional and void as being in violation of the 14th Amendment to the Constitution of the United States, the Commerce Clause of the federal Constitution and the Oregon Admission Act (R 23). The same contentions were raised upon appeal and were considered by the Supreme Court of the State of Oregon (R 222).

The appellants Wilbur J. Smith and Longview Tugboat Company have paid the tax assessed for the year 1950, but have sued for refund thereof in the United States District Court for the District of Oregon. The issues therein raised are in large part the same issues raised by this appeal. The parties hereto have heretofore agreed that said refund suit should be stayed pending the outcome of this appeal.

THE QUESTIONS ARE SUBSTANTIAL

This appeal challenges the constitutionality of a purported Oregon property tax as applied to appellant water transportation companies engaged in the business of transporting freight or passengers for hire upon the rivers in or adjoining the State of Oregon. The Oregon Supreme Court upheld the constitutionality of the tax[1] and this appeal has been taken from such decision.

While this is another case testing the validity of a State tax levy under the Commerce Clause of the Federal Constitution, the segment of commerce here in-

[1] *Smith v. Columbia County*, 68 Or. Adv. Sh. 1071, 341 P.2d 540 (1959).

volved is not in the broad area of Congressional silence causing the "quagmire" mentioned in *Northwestern States Portland Cement Company v. Minnesota* and *Williams v. Stockham Valves & Fittings, Inc.*, 358 U.S. 450, 79 S. Ct. 357, 3 L. Ed. 2d 421 (1959). Rather, the area of commerce involved in this appeal is preempted by the Congressional enactment under the Commerce Clause contained in the below-quoted portion of the Oregon Admission Act:

> "That the said State of Oregon shall have concurrent jurisdiction on the Columbia and all other rivers and waters bordering on the said State of Oregon, so far as the same shall for a common boundary to said State, and any other State or States now or hereafter to be formed or bounded by the same; *and said rivers and waters, and all the navigable waters of said State, shall be common highways and forever free, as well as to the inhabitants of said State, as to all other citizens of the United States, without any tax, duty, impost, or toll therefore.*" (Emphasis added) 11 Stat. 383 (1859), 5 ORS, § 2, p. 1079.

As this Court observed in *Northwestern States* and *Stockham, supra,* "Commerce between the states having grown up like Topsy, the Congress meanwhile not having undertaken to regulate taxation of it . . . there is little wonder that there has been no end of cases testing out state tax levies."[2] This appeal indicates that even Congressional regulation may not be sufficient to reduce the flow of cases. Borrowing the before-mentioned "Topsy" reference used by this Court in *Northwestern States* and *Stockham, supra,* the issues can be broadly stated as follows:

---

[2] 358 U.S. at 457.

What standards for the upbringing of Oregon's Topsy are imposed by the parental admonition in the above-quoted portion of the Oregon Admission Act? Did the Oregon Supreme Court error in holding that such admonition imposes no higher standard for the river phase of Topsy's upbringing than required under the basic child guidance program contained in the Commerce Clause alone?

In addition to the Oregon Admission Act, this appeal presents the following factors which preclude application of the general proposition that a property tax (properly apportioned) may be imposed upon property of a company exclusively engaged in interstate commerce:

1. The Oregon statute imposing the purported property tax expressly conditions its applicability to ". . . water transportation companies engaged in the business of transporting freight or passengers for hire upon the rivers in or adjoining the State of Oregon."[3]

2. The Oregon tax discriminates against interstate commerce.

As discussed below under separate headings, the Oregon Admission Act and the before-mentioned factors generate substantial questions warranting consideration by this Court.

Oregon Admission Act

The above-quoted portion of the Oregon Admission Act (hereinafter referred to as the "Admission Proviso") is a valid Congressional enactment under the

[3] O.C.L.A. § 110-505, as amended by ch 42 Oregon Laws 1947 and ch 414, § 1, Oregon Laws 1949.

Commerce Clause. *Willamette Iron Bridge Co. v. Hatch*, 125 U.S. 1, 10, 8 S. Ct. 811, 31 L. Ed. 629 (1887).[4] It is axiomatic that Congress through enactments under the Commerce Clause may augment the degree of protection from State taxation afforded by the Commerce Clause.[5] The Admission Proviso clearly states that the Columbia River and other navigable waters of the State shall be forever free, without any tax, duty, impost or toll. Congress must have intended some limitation upon the taxing power of the State of Oregon over and above the limitations already obtaining under the Commerce Clause alone.

Any possibility that the Admission Proviso precludes imposition of property taxes on instrumentalities of river transportation is dismissed by the Oregon Court with the statement:

> "It is obvious from a mere reading of this section that the words "without tax, duty, impost or toll therefor' simply refer to the right to travel therein without the imposition of any tax, duty, impost or toll therefor as a condition precedent to such right or as a charge for the privilege, etc." Smith vs. Columbia County, 68 Adv. Sh. 1071, 1095, 341 P. 2d 540, 553-4 (1959).

Although appellants doubt whether the answer is as obvious as indicated by the Oregon Court,

---

[4] See also *Pollard's Lessee v. Hagan*, 3 How. 212, 230, 11 L. Ed. 565 (1844) and *Higman Towing Co. v. Cocreham*, 70 F.Supp. 628, 637 (E.D. La. 1947), affirmed 165 F.2d 789 (5th Cir. 1948).

[5] This ability of Congress to regulate and restrict the taxing power of the states in the interstate commerce field is not only recognized in *Northwestern States* and *Stockham*, supra, but the exercise of such power by Congress is clearly invited therein.

substantiation of appellants' attribution of significance to the Admission Proviso is not dependent upon the proposition that it precludes all property taxes on instrumentalities of river transportation. As covered under the subsequent headings, the Admission Proviso has an impact upon the issues if it merely performs the limited function described in (a) or (b) below:

(a) The Admission Proviso confirms that Commerce Clause protection extends to all transportation upon the Columbia River and other navigable rivers of Oregon, intrastate journeys as well as interstate.

(b) The Admission Proviso prohibits discrimination between various classes of river users to the same extent that the Commerce Clause alone prohibits discrimination against interstate commerce in favor of intrastate or local commerce.

If the Admission Proviso does not have the above limited functions, what meaning does it have? That the Admission Proviso may require a greater degree of uniformity than the Commerce Clause is held or strongly suggested by the decisions of this Court reviewed in the footnote involving admission acts of Oregon and other states principally in non-tax situations.[6]

---

[6] *Pittsburgh & S. Coal Co. v. Louisiana*, 156 U.S. 590, 15 S. Ct. 459, 464, 39 L. Ed. 544 (1895) (Louisiana Admission Act) " * * * The freedom contemplated is that which would be destroyed by denying equality of rights to any particular class of vessels or mode of navigating the Mississippi and other rivers leading into the Gulf of Mexico. * * * " 15 S. Ct. at 464.

Cardwell v. American Bridge Co., 113 U.S. 205, 212, 5 S. Ct. 423, 28 L. Ed. 959 (1885) (California Admission Act)

Operating Incidence of The Oregon Tax Is Based on Interstate Commerce

Although the subject Oregon tax is cast in the form of a property tax, the primary condition of its imposition is not property. Rather, the Oregon statutes expressly conditions applicability of the tax to:

> ". . . water transportation companies engaged in the business of transporting freight or passengers for hire upon the rivers in or adjoining the State of Oregon."[7]

Water transportation companies not covered by the above classification, and therefore not subject to the tax although owning property having a situs in Oregon, include companies transporting freight on the river for their own account rather than for hire, and companies

---

" * * * But upon the mature and careful consideration, which we have given in this case to the language of the clause in the Act admitting California, we are of opinion that, if we treat the clause as divisible into two provisions, they must be construed together as having one object, namely, *to insure a highway equally open to all without preference to any*, and unobstructed by duties or tolls, * * * " 113 U.S. at 212. (emphasis added).

Huse v. Glover, 119 U.S. 543, 548, 7 S. Ct. 313, 30 L. Ed. 487 (1886) (Ordinance of 1787)

" * * * As thus construed, the clause would prevent any exclusive use of the navigable waters of the state—a possible farming out of the privilege of navigating them to particular individuals, classes or corporation, or by vessels of a particular character. * * * " 119 U.S. at 548.

See also *Willamette Iron Bridge Co. v. Hatch*, 125 U.S. 1, 12, 8 S. Ct. 811, 31 L. Ed. 629 (1887) (Oregon Admission Act); *Hamilton v. Vicksburg, S. & P. R.*, 119 U.S. 280, 7 S. Ct. 206, 30 L. Ed. 393 (1886) (Louisiana Admission Act); *Reeves v. Island Creek Fuel & Transportation Co.*, 313 Ky. 400, 230 S.W. 2d 924 (1950), certiorari denied 340 U.S. 853, 71 S. Ct. 82, 95 L. Ed. 625 (1950) (Virginia-Kentucky Compact).

[7] Footnote 3, supra.

using the Columbia River as part of an ocean-going trip either for their own account or for hire.

The Oregon Supreme Court recognizes the foregoing limitations upon and conditions to applicability of the Oregon tax. In considering classification for purposes of the Equal Protection Clause, the Oregon Court emphasizes that there are two requirements of the property tax classification applicable to appellants in addition to their being "water transportation companies." The Oregon Court states such requirements as follows:

> "But there are two more requirements. The companies must be engaged in the business of transporting freight or passengers for hire and the transportation must be upon the rivers in or adjoining the State of Oregon." 68 Or. Adv. Sh. at 1091, 341 P. 2d at 552.

Furthermore, all property possessed by water transportation companies within the classification is not taxed, the tax only being applied to property actually used in the business of transporting freight or passengers for hire upon the rivers in or adjoining the State of Oregon.[8]

What is the true "operating incidence" of the subject Oregon tax in view of the following:

(i) The property tax classification is expressly limited to water transportation companies engaged

---

[8] Only the watercraft of appellant used in conducting business between Oregon and other states is included in the apportionment formula of the state under Sec. 4, Ch. 405, Oregon Laws 1949. Oregon realty is similarly excluded if not "in use in the operation of * * * " appellants' business. Sec. 3, Ch. 405, Oregon Laws 1949. O.C.L.A. § 110-513 excludes from assessment the property both in and outside of the state not connected with the appellants' business when the unit valuation method is employed.

in the business of transporting freight or passengers for hire upon the rivers in or adjoining the State of Oregon.

(ii) Property of the covered water transportation companies is not subjected to the tax unless used in the business of transporting freight or passengers for hire upon the rivers in or adjoining the State of Oregon.

It is appellants' proposition that either of such factors alone, and certainly both combined, dictate the conclusion that the operating incidence of the tax is the engaging in the business of transporting freight or passengers for hire upon the rivers in or adjoining the State of Oregon.[9] This conclusion is so strongly dictated by such

---

[9] See *Gloucester Ferry Co. v. Pennsylvania*, 114 U.S. 196, 211, 5 S. Ct. 836, 29 L. Ed. 158 (1884)

"* * * * we are clear that a tax or other burden imposed on the property of either corporation because it is used to carry on that commerce or upon the transportation of persons or property, or for the navigation of the public waters over which the transportation is made, is invalid and void as an interference with, and in obstruction of the power of Congress in the regulation of such commerce."

See also *Helson v. Kentucky*, 279 U.S. 245, 49 S. Ct. 279, 281, 73 L. Ed. 683 (1929)

"* * * The tax [herein] is exacted as the price of the privilege of using an instrumentality of interstate commerce. It reasonably cannot be distinguished from a tax for using a locomotive or a car employed in such commerce. A tax laid upon the use of the ferryboat would present an exact parallel. And is not the fuel consumed in propelling the boat an instrumentality of commerce no less than the boat itself? A tax which falls directly upon the use of one of the means by which commerce is carried on directly burdens that commerce. If a tax cannot be laid by a state upon the interstate transportation of the subjects of commerce, as this Court definitely has held, it is little more than repetition to say that such a tax cannot be laid upon the use of a medium by which such transportation is effected."

factors as to preclude any contrary identification of operating incidence by the Oregon Court. As restated in *Railway Express Agency, Inc. v. Virginia,* 358 U.S. 434, 79 S. Ct. 411, 3 L. Ed. 2d 450 (1959) designation of the operating incidence by the State Court is very persuasive, but not conclusive.

Under the established doctrine referred to in *Northwestern States* and *Stockham,* supra, it seems evident that a State tax levy, whether measured by the value of property or by net income, is void under the Commerce Clause where the operating incidence of the tax requires active engagement in a segment of commerce falling wholly and completely within the protection of the Commerce Clause.[10] The only objection which might be advanced to the conclusion that the business of transporting freight or passengers for hire upon the rivers falls completely within Commerce Clause protection is that intrastate voyages on navigable waters may not enjoy the same protection under the Commerce Clause as do interstate voyages.[11] However, any such objection is nullified by the augmentation of the Commerce Clause

---

[10] *Spector Motor Service v. O'Connor,* 340 U.S. 602, 71 S. Ct. 508, 95 L. Ed. 573 (1951) is cited in *Stockham* for the proposition that an otherwise valid tax measured by net income cannot be directly based on the engaging in interstate commerce. It follows that an otherwise valid property tax will suffer the same unconstitutional fate if based on the engaging in interstate commerce.

[11] Compare *Wilmington Transp. Co. v. Railroad Commission,* 236 U.S. 151, 35 S. Ct. 276, 59 L. Ed. 508 (1914); *Harman v. Chicago,* 147 U.S. 396, 13 S. Ct. 306, 37 L. Ed. 216 (1893); *New York ex rel Cornell Steamboat Co. v. Sohmer,* 235 US. 549, 35 S. Ct. 162, 59 L. Ed. 355 (1915); *Cornell Steamboat Co. v. United States,* 321 U.S. 634, 64 S. Ct. 768, 88 L. Ed. 978 (1944); *Central Greyhound Lines v. Mealey,* 334 U.S. 653, 68 S. Ct. 1260, 92 L. Ed. 1633 (1948).

accomplished through the Admission Proviso. As set forth in subparagraph (a) on page 13, supra, the Admission Act confirms Commerce Clause protection for all transportation on the Columbia and other navigable rivers, intrastate journeys as well as interstate.

Consequently, the operating incidence of—engaging in the business of transporting freight or passengers for hire upon the rivers in or adjoining the State of Oregon—is a segment of commerce fully and completely within the area protected by the Commerce Clause as augmented by the Admission Proviso. There are no fragments of the operating incidence falling outside such Commerce Clause protection to furnish a possible local or indirect basis for the tax.

The Oregon Court avoids the sanction of the Commerce Clause and the Admission Proviso by merely regarding the Oregon tax as a property tax presumably having a normal operating incidence. The possibility is overlooked by the Oregon Court that the conditions and limitations upon the applicability of the Oregon tax might create an operating incidence for the Oregon tax different from that of a normal property tax.[12]

---

[12] This is illustrated by the Oregon Court's citation of *Reeves v. Island Creek Fuel and Transportation Co.*, 313 Ky. 400, 230 S.W. 2d 294 (1950), certiorari denied 340 U.S. 853, 71 S. Ct. 82, 95 L. Ed. 625 (1950), without recognizing the difference between the property tax involved therein and the subject Oregon tax. In the *Reeves* case, the Kentucky Court upheld the application of a property tax to vessels owned by a foreign corporation despite provisions of a Congressional enactment similar to the above quoted portion of the Oregon Admission Act. As stated by the Kentucky Court, the property tax of that state was a general tax applicable to all property owners and therefore had the normal operating incidence of an ad valorem tax. Applicability of the

Comparison of the subject Oregon tax with the tax recently considered by this Court in *Railway Express Agency v. Virginia, supra,* may illustrate the interrelation between operating incidence and classification conditions. In *Railway Express,* a Virginia franchise tax measured by gross receipts was construed as a property tax on the intangible property of express companies. The operating incidence upon which this Court supported the validity of the tax was the property, not the activity generating the gross receipts. While the Virginia tax was imposed under an "express company" classification, just as the subject Oregon tax is imposed under a "water transportation company" classification, the express company classification was not conditioned upon and limited to companies using a specified avenue of commerce fully within the protection of the Commerce Clause. Rather, the express company classification applied to all such companies, irrespective of the intra or interstate commerce nature of their business.

The Oregon Tax Discriminates Against Interstate Commerce

As disclosed in the following summary, there are differences in the tax treatment accorded appellants'

Kentucky property tax, or any classification thereunder was not conditioned upon a specified use of the navigable rivers. In the words of the court:

> ". . . This is not an attempt to impose a usage tax on navigation, or a license tax, a privilege tax, or any tax on or because of the transportation or the right of transit through the state. It is nothing more than an attempt to tax property having a tax situs within the state, whether on the river or off the river. The general rules and principles applicable herein have been enunciated by the courts on numerous occasions." 230 S.W. 2d at 930, citing cases.

classification and the treatment accorded other property tax classifications:

Appellant River Users—Tangible and intangible property is taxed at 100% of true cash value. Definition of intangible property includes Interstate Commerce Commission franchises upon which appellants' businesses are dependent. Any property of appellants excluded from this classification because not used in the business falls under the next classification to the extent such property has a situs in Oregon.

Nonriver Users—Tangible property only is taxed under the Oregon general property tax covering most intrastate businesses and nonriver users at 100% of true cash value.

Other River Users—Vessels using or free to use the rivers fall within the following classifications:

1. Vessels registered or enrolled in Oregon (other than vessels of water transportation companies in appellants' classification and vessels engaged in intercoastal or foreign trade) are taxed at 10% of true cash value.

2. Vessels registered or enrolled in Oregon engaged in intercoastal or foreign trade are taxed at 1% of true cash value.

3. Vessels not registered or enrolled in Oregon (other than vessels of water transportation companies in appellants' classification) are not subject to tax unless in Oregon on the January 1 assessment date for the general property tax.

As indicated by the foregoing, a definite preference exists in favor of the nonriver classification as compared to appellants' classification. While the valuations are the same, intangible property is subjected to tax under appellants' classification but not under the nonriver classification. If such preference is within the tolerances permitted by the Commerce Clause alone, it transcends the equality of treatment required by the Admission Proviso. In addition, there is obvious discrimination against appellants in favor of the other river users. As stated in subparagraph (b) on page 13, whether or not the Commerce Clause alone precludes discrimination between various river users, the Admission Proviso supplies any such deficiency.

The tax differences outlined above are recognized by the Oregon Supreme Court in its lengthy discussion of permitted classification under the Equal Protection Clause of the 14th Amendment. However, the Oregon Court does not consider the possibility that such differences may constitute discrimination prohibited by the Commerce Clause and the Admission Proviso.

Discrimination against interstate commerce is a ground for invalidating a state tax levy distinct and separate from the operating incidence.[13] Even if the Oregon tax should be considered as a property tax having the ordinary incidence thereof, the tax is nevertheless void if discriminatory.

---

[13] *Memphis Steam Laundry Cleaner v. Stone*, 342 U.S. 389, 72 S. Ct. 424, 96 L. Ed. 436 (1952).

How can the discrimination outlined above be reconciled with the clear mandate of the Commerce Clause, as augmented by the Admission Proviso, that the Columbia River and other navigable waters shall be common highways forever free, without any tax, duty, impost or toll?

It is respectfully submitted that any doubt concerning the substantiality of the questions presented is eliminated when the above asserted discrimination plus the impact of the Admission Proviso are added to the classification distinction discussed on page 19 as grounds for differentiating the subject Oregon tax from the property tax involved in *Railway Express Agency, Inc. v. Virginia, supra.*

Respectfully submitted,

ROBERT T. MAUTZ,
of Attorneys for
Plaintiff-Appellants,
10th Floor, Board of Trade Bldg.,
Portland 4, Oregon.

APPENDIX A

The opinion of the trial court below reads as follows:

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MARION

WILBUR J. SMITH, et al, Plaintiffs	)	
vs.	)	
COLUMBIA COUNTY, ORE- and M. R. CALHOUN, Sheriff of Columbia County, et al, Defendants.	)	No. 37900 MEMORANDUM OPINION
ARROW TUG AND BARGE CO., and Oregon corporation, et al Plaintiffs in Intervention	)	

The plaintiffs and plaintiffs in intervention question the constitutionality of Chapters 405, 413 and 414 of Oregon Laws of 1949, and the prior laws of which they are amendatory, pursuant to which the State Tax Commission of the State of Oregon assessed tugs, barges and vessels owned and operated by the plaintiffs and the plaintiffs in intervention, and fixed and determined an ad valorem tax on such tugs, barges and vessels and apportioned the assessed values among the several county defendants and upon which said assessment and apportionment said county defendants have levied a tax thereon.

This matter was heard on December 12, 1951, before the Honorable Rex Kimmel and thereafter by agreement of all parties briefs were submitted. While these briefs were being submitted the Honorable Rex Kimmel died and this matter has been held in abeyance since.

This court heard the arguments of counsel at which time it was stipulated in open court by all of the parties that this matter would be submitted on the pleadings, the stipulations as to the facts, the exhibits, the transcript of proceedings taken before the Honorable Rex Kimmell December 12, 1951, and the oral arguments of the parties.

The court feels that no purpose would be served in enumerating all of the stipulations as to the facts as they are part of the record in this case. As far as the question before the court is concerned, however, it should be pointed out that the stipulations as to facts show that the vessels of the plaintiffs and intervenors operate with consistent regularity upon the Columbia River and its tributaries, although not on a regularly defined schedule throughout the calendar year and that said vessels and the facilities of the plaintiffs and of the intervenors constitute a necessary and integral part of their business. The stipulations of fact also show that there are vessels other than the plaintiffs or the intervenors operating for hire between points along the Pacific Coast in the State of Oregon; that there are vessels other than those of the plaintiff and the intervenors transporting commodities for hire between points on the Columbia River and its tributaries and other States, Territories, and Possessions of the United States and Foreign Countries, and that there are vessels owned and used by individuals and corporations for the transportation of the owner's private property in the Columbia River and its tributaries.

Exhibits No. 1, 4, 7, and 8 show the movement of some of the various vessels in the Columbia River and in its tributaries; Exhibit No. 2, a report to the Public Utilities Commissioner of Oregon, shows the type of business being conducted by one of the intervenors, its assets, its operating revenues and expenses and the vessels owned and the number of revenue passengers carried as well as the number of employees; Exhibits No. 3 and 5, are annual reports by intervenors to the Public Utilities Commissioner of the State of Oregon and calls for a report on the value of property and equipment within the State of Oregon and depreciation base thereof, water line operating revenues and expenses, operating rents, terminal property and equipment within the State of Oregon, ports plied between or touched in regular runs, frequency of service, description of floating equipment within the State of Oregon and freight carried during the year within the State of Oregon.

Exhibit No. 6 is a report to the State Tax Commission of the State of Oregon calling for the name of the reporting utility, address of the principal office, location of plant, limits of territory served, assets, liabilites, depreciation reserve and operating revenues and expenses.

The court has read the transcript of testimony of Wilbur J. Smith and Exhibit No. A. One of the issues in this case according to the stipulation of fact as between the plaintiffs and the defendants, is the residence of the plaintiff Wilbur J. Smith. This court fails to see and counsel, upon being questioned by the court,

could give no reason why the residence of Wilbur J. Smith was of any materiality as far as the issue in this case is concerned and this court finds that the residence of Wilbur J. Smith has no bearing upon whether or not the laws under question are constitutional and therefore the court finds it not necessary to rule upon Mr. Smith's residence.

The court believes it has fairly and accurately stated the facts which are material to a determination of the question involved in this matter.

The plaintiffs and the intervenors have advanced in their briefs and in oral argument that they are taxed upon their entire business, property, capital and earnings and have advanced the proposition that the State Tax Commission assesses and taxes not only vessels but also interstate commerce, gross receipts, net income, and commerce conducted by the vessels. There is no evidence in this case that such is a fact. The only evidence concerning earnings, gross income, value of all of the property of either plaintiffs or intervenors are those as is contained in the Exhibits above mentioned. There is no evidence that the State Tax Commission uses these factors in arriving at the true cash value of the vessels plying on the Columbia River on the Oregon side of the channel.

The plaintiffs and the intervenors claim that the statutes under question are void because of an indefiniteness and uncertainty because of an absence of a precise criteria for making an assessment and apportioning the assessment and is in violation of the 14th

Amendment of the constitution of the United States; because it constitutes an abortive and unlawful delegation of legislative authority to the Tax Commission and deprives the plaintiffs of property without due process of law; that the laws upon which said ad valorem taxes are authorized is arbitrary and discriminatory and that the tax authorized imposes an undue burden upon interstate and foreign commerce and is repugnant to Article I, Section 8, paragraph 3 of the United States constitution; that the law violates the Oregon Admissions Act, 11, Statutes at Large, page 33, Section 3, page 383; the commerce clause of the constitution of the United States and Article I, Section 32 and Article 9, Section 1 of the Constitution of the State of Oregon.

It was clearly settled by the United States Supreme Court in the case of Ott vs. Mississippi Barge Line Co., 336 U.S. 169, that the State may impose an ad valorem tax upon vessels and barges used in Interstate Commerce within the boundaries of the State and that the due process and commerce clauses of the Constitution of the United States are not violated by such an ad valorem tax.

Section 110-312 as amended by Section 1, Chapter 359, Oregon Laws 1941, and as amended by Chapter 405, Oregon Laws 1949, provides that all personal property shall be assessed at its situs as of the date and year of assessment prescribed by law and provides that boats, vessels or other water craft registered or enrolled within this State, except such as are assessed by the State Tax Commission, shall be assessed in the county of such registry or enrollment.

Section 110-313 as amended by Chapter 263, Oregon Laws 1945, and as amended by Chapter 405, Oregon Laws 1949, provides "except as otherwise provided by law all ships and vessels whose home port of registry or enrollment are in the State of Oregon other than such as are assessed by the State Tax Commission, shall be assessed at 10% of the true cash value thereof; provided, however, that ships and vessels in intercoastal or foreign trade, whether actually engaged therein or laid up, shall be assessed at 1% of the true cash value thereof; and provided further, that to and including the year 1951 the same rule of 1% shall apply to ships and vessels which may be under original construction".

Section 110-335 OCLA states the procedure to be followed by the various county assessors in assessing all taxable property within the county, except such as by Law is to be otherwise assessed, and defines true cash value.

These sections apply to all property within each county and would of necessity include vessels of private carriers.

Section 110-512 enumerates the duties of the State Tax Commission to prepare an assessment roll and sets forth the powers and duties of the Commission and how the Commission shall determine the true cash values of property assessable for taxation and said statute concludes by stating: "If the value of any property having a situs in this state of the company operating both within and without the State cannot fairly be determined in the above manner said Commission may use any

other reasonable method to determine the proper proportion of the entire property assessable for taxation in this State."

Section 110-516 as amended by Chapter 413, Oregon Laws, 1949, sets out the method whereby amounts of assessment shall be apportioned to the several counties within this state and as to water transportation companies this chapter concludes: "Assessments of water transportation companies shall be allocated and apportioned to those counties which border upon the rivers navigated by such companies".

Section 110-505 OCLA as amended by Chapter 442, Oregon Laws 1947, and as amended by Chapter 414 Oregon Laws 1949, details the duties of the State Tax Commission and among those duties is the duty to make an annual assessment of "water transportation companies engaged in the business of transporting freight or passengers for hire upon rivers in or adjoining the State of Oregon.

Section 110-544 as amended by Chapter 405, Oregon Laws 1949, defines property having a situs in this State and includes all property, real and personal, and such portion of water craft as is used partly within and partly without this State.

It is the opinion of the court that the statutes under question are sufficiently definite in their provisions for making an assessment and apportionment. It is clear in reading these statutes that there is nothing arbitrary or discriminatory therein because the statutes apply to the Columbia River and its tributaries as well as all

other rivers in this State. Private carriers are assessed and taxed as well as common carriers and carriers for hire.

It is the opinion of this court that the legislature has not abused its discretion nor acted in an arbitrary or discriminatory manner nor violated any provisions of the Constitution of the United States or the State of Oregon in making the classifications as to vessels enrolled or not enrolled in this State or as to vessels engaged in intercoastal or foreign trade. The court finds that the classification made by the legislature is reasonable and not unconstitutional.

The court is of the opinion that the statutes under question provide for an assessment and placing of an ad valorem tax upon the plaintiffs and the intervenors. The evidence does not disclose any tax upon the gross earnings, operations or business of the plaintiffs or intervenors and no toll or tax is being levied for the use of the Columbia River. The Oregon Admissions Act is not being violated.

It is the opinion of the court that equal protection, undue process and commerce clauses of the Constitution have not been violated.

The court holds the acts under question are valid and are not unconstitutional.

It is the further opinion of this court that the temporary injunction issued by the Honorable Rex Kimmel on the 11th day of September, 1953, be continued in full force and effect for a period of 60 days from and after the entry of the decree in this case.

Counsel for the defendants will prepare and submit a decree to the court for signature in accordance herewith.

/s/ Lester W. Humphreys
Circuit Judge pro tem

The opinion of the Supreme Court of Oregon reads as follows:

MILLARD, Justice pro tem.

This is an appeal by all the above named plaintiffs, including plaintiffs in intervention, from a decree of the Circuit Court for Marion County upholding the constitutionality of chapters 405, 413 and 414 of Oregon Laws 1949 insofar as such statutes provide for the assessment for taxation purposes for the year 1950 upon the tugs, barges and vessels of plaintiffs and plaintiffs in intervention operating within the inland waters of the Columbia River and its tributaries.

In discussing the merits of this case it is necessary that we set forth portions of the applicable statutes as they existed on June 1, 1950. In so doing we have excluded such sections or portions thereof as do not refer to the instant case, but only to taxation generally. The pertinent portions are as follows:

> "Sec. 110-505 OCLA. It shall be the duty of the said state tax commission:
>
> * * * * * *
>
> "14. To make an annual assessments, upon an assessment roll to be prepared by said commission, *of the property having a situs in this state,* as hereinafter defined, of all railroad companies, sleeping car companies, union station and depot companies,

electric and street railway companies, express companies, telegraph companies, telephone companies, refrigerator car companies, tank line companies, private car companies, pipe line companies, toll bridge companies, heating companies, water, gas and electric companies, people's utility districts, aircraft companies engaged in air transport of passengers, freight, *express or mail and water transportation companies engaged in the business of transporting freight or passengers for hire upon the rivers in or adjoining the State of Oregon.*" (Italics supplied.) Sec. 110-505 OCLA, as amended by Chap. 442, Oregon Laws 1947, and as further amended by Sec. 1, Chap. 414, Oregon Laws 1949, now ORS 308.515.

Oregon Laws 1949, Chap. 405:

"Section 1. That section 110-312, O.C.L.A., as amended by section 1, chapter 359, Oregon Laws 1941, be and the same hereby is amended so as to read as follows:

"Sec. 110-312. Except as otherwise specifically provided, all personal property shall be assessed for taxation each year at its situs as of the day and hour of assessment prescribed by law; provided, that boats, vessels or other watercraft registered or enrolled within this state, except such as are assessed by the state tax commission, shall be assessed in the county of such registry or enrollment. * * *

"Section 2. That section 110-313, O.C.L.A., as amended by section 1, chapter 263, Oregon Laws 1945, be and the same hereby is amended so as to read as follows:

"Sec. 110-313. 1. Except as otherwise provided by law, all ships and vessels whose home ports of registry or enrolment are in the state of Oregon, other than such as are assessed by the state tax commission, shall be assessed at 10 per cent of the true cash value thereof; provided, however, that

ships and vessels in intercoastal or foreign trade, whether actually engaged therein or laid up, shall be assessed at 1 per cent of the true cash value thereof; and provided further, that to an including the year 1951 the same rule of 1 per cent shall apply to ships and vessels which may be under original construction at the assessment date of any year, but such rule shall not apply to materials not actually in place as the constructed part of any such ship or vessel.

* * * * * *

"Section 3. That section 110-543, O.C.L.A., be and the same hereby is amended so as to read as follows:

"Sec. 110-543. The term 'property', as used in this act, shall be deemed to include all property, real and personal, tangible and intangible, subject to assessment for taxation under this act, belonging to the company, or held by it as occupant, lessee, or otherwise, and shall include the lands and buildings, rights of way, roadbed, water powers, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph, telephone, and transmission lines, poles, wires, conduits, switchboards, machinery, appliances, appurtenances, docks, watercraft and all other property of a like or different kind, used in carrying on the business of said company, and owned, leased, or operated by it, and all other real and personal property and all franchises and special franchises;
* * *

"Section 4. That section 110-554, O.C.L.A., be and the same hereby is amended so as to read as follows:

"Sec. 110-544. The term 'property having situs in this state,' shall include all property, real and personal, of the companies included in this act, owned, leased, used, operated or occupied by them, *and also such proportion of the watercraft, rolling stock, cars, and other personal property of a like or differ-*

ent kind as is used partly within and partly without the state as herein provided to be determined." (Italics supplied.) (now ORS 308.505)

Oregon Laws 1941, Chap. 440:

"Section 12. That section 110-510, O.C.L.A., be and the same hereby is amended so as to read as follows:

"Sec. 110-510. The several companies enumerated in this act, doing business in this state, hereby are required to make and file with the state tax commission, on or before the first day of February of each year, in such form and on such blanks as said commission may provide, a statement, under oath, to be made by the president, secretary, treasurer, superintendent, or chief officer of such company, covering a period of at least one year and not exceeding five years, as may be required by such commission, provided, however, that class I railroads, class A electric companies, class A telephone companies, telegraph companies and sleeping car companies shall be required to file such statement on or before the fifteenth day of March of each year. Each such statement shall contain the following facts:

"1. The name of the company, the nature of the business conducted by the company, and under the laws of what state or country it is organized; the location of its principal office; the name and postoffice address of its president, secretary, auditor, treasurer, superintendent, and general manager; the name and postoffice address of the chief officer or managing agent or attorney in fact in Oregon.

"2. The number of shares of capital stock.

"3. The par value and market value, or actual value if there be no market value, or the shares of stock on the first day of January at the hour of 1 o'clock a.m. of the year in which the report is made.

"4. The bonds and other corporate obligations owing by the company.

"5. The par value and market value or actual value if there be no market value, of the bonds or other obligations owing by the company on the first day of January at the hour of 1 o'clock a. m. of the year in which the report is made.

"6. A detailed statement of the real property owned by the company in Oregon, where situated and the value thereof.

"7. A detailed statement of the personal property, including money and credits, owned by the company in Oregon on the first day of January at the hour of 1 o'clock a. m. of the year in which the report is made, where situated and the value thereof.

"8. The total value of the real estate owned by the company situated outside of the state.

"9. A full and complete statement of the cost and actual present value of all buildings of every description owned by said company within the state.

"10. The total value of the personal property of the company situated outside of Oregon.

"11. The total length of the company's lines, the length of its lines within the state of Oregon, and also the length of its lines without the state of Oregon, including those which said company controls or uses as owner, lessee or otherwise.

"12. A statement of the number of miles of main line, branch lines, double track, spurs, yard tracks and side tracks, owned or leased by said company in each county in this state, and each municipal subdivision thereof, stated separately.

"13. A statement in detail of the entire gross receipts and net earnings of the company from all sources, stated separately for the fiscal year next preceding the date of the report.

"14. Such other facts or information as said commission may require in the form of return pre-

scribed by it. The commission hereby is given the power to prescribe directions, rules and regulations to be followed in answering any requirement of this act." Sec. 110-510, OCLA, as amended by Chap. 440, Oregon Laws 1941 (now ORS 308.520 and 308.525).

"Sec. 110-512. It shall be the duty of said state tax commission to prepare each year an assessment roll, in which shall be assessed, as of the first day of January, at the hour of 1 o'clock a. m. of such year, the true cash value of all the properties of the several companies subject to taxation under this act, which said assessment roll shall not be final until reviewed as herein provided. *For the purpose of arriving at the amount and character and true cash value of the property belonging to any such company, the said commission personally may inspect such property, and may take into consideration the statements filed under this act,* the reports, statements or returns of said company filed in the office of any board, office or commission of this state, or any county thereof, the earning power of said company, the franchises and special franchises owned or used by said company, and such other evidence of any kind as may be obtainable bearing thereon; *provided, that in no event shall any report, statement or return be conclusive upon said commission in arriving at the amount and character and true cash value of the property belonging to any such company.* When any company owns, leases, operates or uses rail, wire or pipe lines or property within or without this state, if the commission shall value the entire property within and without this state as a unit, it may ascertain the property subject to taxation in Oregon by the proportion which the number of miles of rail, wire, or pipe lines in Oregon, controlled or used by said company, as owner, lessee, or otherwise, bears to the entire mileage of rail, wire or pipe lines, controlled or used by said company, as owner, lessee, or otherwise. *If the value of any property having*

a situs in this state, of a company operating both within and without the state, cannot fairly be determined in the above manner, said commission may use any other reasonable method to determine the proper proportion of the entire property assessable for taxation in this state." Sec. 110-512, OCLA, as amended by Sec. 14, Ch. 440, Oregon Laws 1941 (now ORS 308.540, 308.545 and 308.550). (Italics supplied.)

"The said commission, for the purpose of arriving at the actual cash value of the property assessable by it, as herein provided, may value the entire property, both within and without the state of Oregon, as a unit. *In case it shall value the entire property as a unit, either within or without the state of Oregon, or both, the commission shall make deductions of the property of said company situated outside of the state, and not connected directly with the business thereof, as may be just, to the end that the fair proportion of the property of the said company in this state may be ascertained.* If the said commission value the entire property within the state of Oregon as a unit, it shall make deductions of the property of said company situated in Oregon, and assessed by the county assessors, to an amount that shall be just; and for that purpose the county assessors shall be and they are hereby required, if the said commission request the same, to certify to the said commission the assessable value of the property of said companies assessable by them, but such certification of assessed or assessable value is intended to be advisory only, and not conclusive upon the said commission." Sec. 110-513, OCLA (now ORS 308.555). (Italics supplied.)

"For the purpose of determining the respective amounts of the assessment of any company, under the provisions of this act, that shall be apportioned to the several counties in this state, into or through which the rail lines of said company extend or are

operated, the state tax commission shall multiply the value per mile, as above ascertained, of the several main and branch lines by the number of miles of such main and branch lines, respectively, including miles of main tracks, spurs, yard tracks and side tracks, in each of the counties, as reported by said company, or as otherwise ascertained and determined by said commission. Values distributed over wire or pipe lines, as aforesaid, shall be apportioned to the counties in which such lines are situated by multiplying the rate per mile in each case, determined as aforesaid, by the number of miles of said wire or pipe lines in said counties, respectively. *If the property of any company assessable under the provisions of this act is of such a character that its value can not reasonably be apportioned on the basis of rail, wire or pipe line mileage, said commission may adopt such other method or basis of apportionment to the county or counties in which said property is situated as may be feasible and proper.* As determined by said commission values of electric power plants and water powers, connected with or used in the operation and business of any company, assessable under the provisions of this act, may be apportioned to the counties in which the same are situated, in such manner as said commission may deem to be reasonable and fair. Assessments of aircraft companies shall be allocated and apportioned to those counties only in which such aircraft companies make regular services landings." Sec. 110-516, OCLA (now ORS 308.565).

Section 1, chapter 413, Oregon Laws 1949, in amending section 110-516, OCLA, as above stated, added the following:

> *"Assessments of water transportation companies shall be allocated and apportioned to those counties which border upon the rivers navigated by such companies."* (Italics supplied.)

Section 110-525, OCLA, as amended by chapter 322, Oregon Laws 1945 and as further amended by chapter 81, Oregon Laws 1947, provides for certification of the assessments made by the tax commission to the assessors of the various counties affected and for the levy and collection of taxes therein the same as other ad valorem taxes, except the commission is empowered to charge, levy and collect the tax as "personal property * * * having a taxable situs in this state."

Except with reference to the residence of plaintiff Wilbur J. Smith, which we deem immaterial, the facts of this case have been stipulated by the parties. It should be noted at this juncture that the actual valuation of the property in question as found by the assessing officers is, by agreement of both counsel made at the time of argument here, not an issue in this case. The stipulation is as follows:

> "It is hereby stipulated and agreed by and between the respective plaintiffs and the defendants herein, for the purpose of this proceeding, as follows:
>
> "1. That the plaintiff Longview Tugboat Company is now and at all times mentioned in the complaint was a corporation organized under the laws of the State of Washington and has not been qualified to do business in the State of Oregon; that the plaintiffs Elmer Danielsen dba Puget Island Ferry and Esson H. Smith dba C. T. Smith and Son now are and at all times mentioned in the complaint were residents of the State of Washington; that the question as to the residence of the plaintiff Wilbur J. Smith is to be determined upon the evidence presented to the court in this proceeding.
>
> "2. That the ordinary course of business of the

plaintiff Elmer Danielsen dba Puget Island Ferry is the transportation for hire of passengers and vehicles on the Columbia River between Puget Island, Washington, and Westport, Oregon, and that of the plaintiffs Wilbur J. Smith, Longview Tugboat Company and Esson H. Smith dba C. T. Smith and Son, is the transportation of freight for hire, without any fixed termini and on an 'on call' basis, on the Columbia River and its tributaries between various points in the State of Oregon and various points in the State of Washington, and that the operations of plaintiffs have been carried on without substantial interruption throughout the year for a period of approximately twenty years.

"3. The tugs, barges, and other vessels owned and operated by the respective plaintiffs were for the 24 hour period constituting the first day of January, 1950, physically located in the State of Washington with the exception of the tugboats Dixie, Barnacle, and Volcano and the Holk F-18 owned by the plaintiff Wilbur J. Smith which were located in the State of Oregon; that the tugs, barges, and vessels owned by the respective plaintiffs were assessed at their full cash value in the State of Washington for the year 1950; that taxes to the extent of 5 mills in accordance with Remington Revised Statutes, Sec. 11 111-2, 11 222, of the State of Washington, have been paid by said plaintiffs to the State of Washington.

"4. That there are a number of water carriers operating for hire between points along the Pacific Coast in the State of Oregon; that there are a number of water carriers operating for hire between points on the Columbia River and other rivers in the State of Oregon and points along the Pacific Coast without the State of Oregon; that there are a number of vessels operating for hire in intercoastal and foreign trade to and from points on the Columbia River and other rivers in the State of Oregon; that there are a number of tugboats, barges and

other vessels owned and used by individuals and corporations for the transportation of the owners private property on the river in or bordering upon the State of Oregon.

"5. That a majority of the total tonnage transported by plaintiffs, Wilbur J. Smith and Longview Tugboat Company originated in the State of Oregon and terminated in the State of Washington, the latter transporting freight primarily for the Longbell Lumber Company, Longview, Washington.

"6. That approximately an equal amount of the passenger and vehicle transported by the plaintiff Elmer Danielsen dba Puget Island Ferry, originated and terminated in the States of Oregon and Washington.

"7. That a minority of the tonnage transported by the plaintiff Esson H. Smith dba C. T. Smith and Son either originates or terminates in the State of Oregon.

"8. That in so far as Wilbur J. Smith is concerned, the office where the business of the company has been transacted for approximately 20 years including the keeping of operating books and records, the dispatch of tugs, payment of crews, etc., is located at Rainier, Oregon.

"9. That in so far as the Longview Tugboat Company is concerned, Longview, Washington, is the principal place of business but for the last five years it has continuously maintained an office for the keeping of operating books and records, and dispatching of crews at Rainier, Oregon.

"10. That in so far as Elmer Danielsen dba Puget Island Ferry and Esson H. Smith dba C. T. Smith and Son are concerned, their principal office and places of business for the keeping of operating books and records, the dispatching of vessels and the payment of crews have been and continue to be in the State of Washington.

"11. That Wilbur J. Smith owns and maintains real property and facilities for the docking and moorage of vessels and the making of minor repairs at Rainier, Oregon; that Longview Tugboat Company utilizes such facilities of Wilbur J. Smith on a per diem basis; that Elmer Danielsen dba. Puget Island Ferry uses a ferry slip and apron at Westport, Oregon; that Esson H. Smith dba C. T. Smith and Son maintains terminal facilities at Stevenson, Washington.

"12. That Wilbur J. Smith and Esson H. Smith dba C. T. Smith and Son owns, leases and maintains in both Oregon and Washington land dolphins, pilings, and other facilities for the moorage and storage of log rafts in transit.

"13. That Longview Tugboat Company utilized the moorage facilities of Wilbur J. Smith and others in both Oregon and Washington for the moorage of log rafts in transit, upo an per diem basis.

"14. That the vessels owned and operated by the plaintiffs and used in the operation of their water transportation businesses for the year 1949 consisted, in so far as Wilbur J. Smith is concerned, of 14 tugs and 4 barges; in so far as Longview Tugboat Company is concerned, of 2 tugs and 1 barge; in so far as Esson H. Smith dba C. T. Smith and Son is concerned, of 6 tugs; in so far as Elmer Danielsen dba Puget Island Ferry is concerned, of 1 ferry boat.

"15. That the vessels and facilities described in paragraph 11, 12, 13 and 14 hereof are used with consistent regularity by the companies involved, throughout the calendar year although not on a regularly defined schedule, and constitute a necessary and integral part of their business as described herein.

"16. That all of the allegations in the complaint of the plaintiffs which are not denied in the answers of the defendants are deemed admitted."

It is the contention of plaintiffs in this case that the legislative enactments of 1949 and the prior laws of which they are amendatory are so amended or enlarged as they apply to the facts here as to render such statutes invalid, first, as being in violation of the Fourteenth Amendment to the Constitution of the United States relating to equal protection of the laws; second, that such statutes constitute an undue burden and restraint upon interstate commerce in that, under the commerce clause of the United States Constitution, no state may, either directly or indirectly nor under any guise, tax the right to engage in interstate commerce; third, that such statutes are in violation of 11 Statutes at Large of the United States 383, commonly known as the Oregon Admission Act, which was approved and accepted by the Legislative Assembly of Oregon on June 3, 1859; fourth, that these statutory provisions violate Article I, section 32 of the Constitution of Oregon which requires uniformity of taxation within the same classification; and, fifth, that such statutes violate Article IX, section I of the Constitution of Oregon relating to the requirement of uniformity of assessment and taxation.

With relation to the first point, i. e., equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution, plaintiffs concede that generally a state may make reasonable and rational classifications of property for taxation purposes so long as there is equality and uniformity within each class.

> "The equal protection clause does not detract from the right of the state justly to exert its taxing power or prevent it from adjusting its legislation to

differences in situation or forbid classification in that connection, 'but it does require that the classification be not arbitrary, but based on a real and substantial difference having a reasonable relation to the subject of the particular legislation.' " Quaker City Cab Co. v. Commonwealth of Pennsylvania, 277 U.S. 389, 400, 48 S.Ct. 553, 554, 72 L.Ed. 927.

"It does not, however, forbid classification; and the power of the state to classify for purposes of taxation is of wide range and flexibility provided always, that the classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' F. S. Royster Guano Co. v. Commonwealth of Virginia, 253 U.S. 412, 415, 40 S.Ct. 560, 561, 64 L.Ed. 989,990; Airway Electric Appliance Corp. v. Day, 266 U.S. 71, 85, 45 S.Ct. 12, 69 L.Ed. 169, [177]; Schlesinger v. State of Washington, 270 U.S. 230, 240, 46 S.Ct. 260, 70 L.Ed. 557, [564] 43 A.L.R. 1224. That is to say, mere difference is not enough; the attempted classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.' Gulf, C. & S. F. R. Co. v. Ellis, 165 U.S. 150, 155, 17 S.Ct. 255, 257, 41 L. Ed. 666, [668]. Discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision." Louisville Gas & Electric Co. v. Coleman, 277 U.S. 32, 48 S.Ct. 423, 425, 72 L.Ed. 770.

In the instant case the classification extends to "water transportation companies engaged in the business of transporting freight or passengers for hire upon the rivers in or adjoining the state of Oregon." Plaintiffs contend that this classification results in discrimination

as to them in the following particulars. First, they say their property should be assessed and taxed as vessels and not upon the value of the owner's entire business. Plaintiffs' assumption is incorrect. In the first place, it is obvious from a reading of the statutes involved that plaintiffs are only taxed proportionately, determined by a consideration of all their properties in Oregon with relation to their properies elsewhere, having due regard to their total income as some indication of the true cash value of their total properties. In connection with this it should also be pointed out that OCLA, Sec. 110-513, above set forth, permits the Tax Commission to value the property of interstate enterprises as a unit before determining the proportionate part thereof that is taxable in this state. The fact that methods of assessment may vary does not render such assessments invalid so long as the basic rule of relative uniformity required in this state with reference to assessment at true cash value of properties having a situs in Oregon was followed. In fact, it was conceded in the oral argument that actual valuation was not an issue. Unless some such method was used, it would be virtually impossible to tax passenger or freight airplane carriers, railroads, electrical companies and the like at all.

But plaintiffs say there is discrimination because similar vessels operating as "for hire" carriers between points on the Columbia River and points outside the Columbia bar, and also vessels operating "for hire" along the Oregon coast are not included and, hence, taxed at the same rate; that in addition owners of similar vessels engaged in the transportation of their own

property on rivers in or bordering upon the State of Oregon are not included. As to the last, we think there is a very real difference between vessels used by private owners and "for hire" carriers with particular reference to the method of taxation. A private owner who transports his own goods may be totally engaged in the pursuit of pleasure rather than profit and hence is not a "for hire carrier." There is not, therefore, any reason to require such owner to report his income or to make any determination of what proportion of his business was transacted in this state or as between counties any more than it would be sensible to require an automobile owner of a private car to report his out-of-state trips or his trips to other counties in order to determine what county should share in the tax imposed. In other words, he fits reasonably into another classification. Further, it appears there is a very real reason for distinguishing between "for hire" carriers along a river and "for hire" carriers operating in ocean waters, even though the vessels last referred to may also partially operate within the rivers. Many of such vessels may be registered and enrolled in foreign countries and hence, governed by treaty regulation and reciprocity. Furthermore, the legislature was then presumably aware that under the United States Supreme Court decisions it had not yet been held that oceangoing vessels could be taxed other than at the domicile of the owner or in the state where they were registered and enrolled. There is nothing here indicating that plaintiffs are discriminated against because of diversity of citizenship, since the classification is based solely on use of the rivers in or adjoining the

State of Oregon. Further, there is a distinction between oceangoing vessels and river vessels as the very terms imply, as well as in the matter of construction and consequent investment and the service they render in that they only operate locally and for short distances. Further, their revenue depends more on volume of business than miles traveled.

[1-4] We use the term "oceangoing vessels" advisedly. Section 2 of Chapter 405, Oregon Laws 1949 which amends OCLA Section 110-313, and which is above set forth, provided that "all ships and vessels whose home ports of registry or enrolment are in the state of Oregon, *other than such as are assessed by the state tax commission,* shall be assessed at 10 per cent of the true cash value thereof; * * *." (Emphasis ours.) We hold that by the use of the words "other than such as are assessed by the state tax commission" the legislature plainly intended to and did except from the operation of such section of the statute "water transportation companies engaged in the business of transporting freight or passengers for hire upon the rivers in or adjoining the state of Oregon." That is because other provisions of the law heretofore set forth require the Tax Commission to make assessments with reference to the classification last referred to at its true cash value. See Section 110-512, OCLA, above quoted. And in making such assessments, we hold no distinction may be made between vessels enrolled and registered in Oregon and in other states, so that citizens of Oregon and Washington are treated alike, since boats or vessels coming within the classification are now assessed by the Tax Commission

rather than the assessor. In other words, we hold that the attempted classification here is exclusively confined to river traffic. At this juncture, we should clearly point out that we are not here concerned with the actual administration of the law, since there is no issue on that, but only with the question of constitutionality. As a matter of law, a classification will be sustained when it is based upon something substantial and is not arbitrary and unreasonable. What then are the legal tests for determining the reasonableness of a classification?

> "*First. Validity of the Tax Qua Tax.* It is inherent in the exercise of the power to tax that a state be free to select the subjects of taxation and to grant exemptions. Neither due process nor equal protection imposes upon a state any rigid rule of equality of taxation. See Bell's Gap R. Co. v. Commonwealth of Pennsylvania, 134 U.S. 232, 237, 10 S.Ct. 533, 33 L.Ed. 892; Lawrence v. State Tax Commission, 286 U.S. 276, 284, 52 S.Ct. 556, 558, 76 L.Ed. 1102. This Court has repeatedly held that inequalities which result from a singling out of one particular class for taxation or exemption, infringe no constitutional limitation. Magoun v. Illinois Trust & Savings Banks, 170 U.S. 283, 293, 18 S.Ct. 594, 42 L.Ed. 1037; American Sugar Refining Co. v. State of Louisiana, 179 U.S. 89, 94, 21 S.Ct. 43, 45 L.Ed. 102; Armour Packing Co. v. Lacy, 200 U.S. 226, 235, 26 S.Ct. 232, 50 L.Ed. 451; Brown-Forman Co. v. Commonwealth of Kentucky, 217 U.S. 563, 573, 30 S.Ct. 578, 54 L.Ed. 883; Quong Wing v. Kirkendall, 223 U.S. 59, 62, 63, 32 S.Ct. 192, 56 L.Ed. 350; Armour & Co. v. Commonwealth of Virginia, 246 U.S. 1, 6, 38 S.Ct. 267, 62 L.Ed. 547; Alaska Fish Salting & By-Products Co. v. Smith, 255 U.S. 44, 48, 41 S.Ct. 219, 220, 65 L.Ed. 489; State Board of Tax Com'rs of Indiana v. Jackson, 283 U.S. 527, 537, 51 S.Ct. 540, 543, 75 L.Ed. 1248; Broad River Power Co. v. Query, 288 U.S. 178, 180,

53 S.Ct. 326, 327, 77 L.Ed. 685; Fox v. Standard Oil Co., 294 U.S. 87, 97, 55 S.Ct. 333, 337, 79 L.Ed. 780; Cincinnati Soap Co. v. United States, 301 U.S. 308, 57 S.Ct. 764, 81 L.Ed. 1122; Great Atlantic & Pacific Tea Co. v. Grosjean, 301 U.S. 412, 57 S.Ct. 772, 81 L.Ed. 1193.

"Like considerations govern exemptions from the operation of a tax imposed on the members of a class. A legislature is not bound to tax every member of a class or none. It may make distinctions of degree having a rational basis, and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it. Rast v. Van Deman & Lewis Co., 240 U.S. 342, 357, 36 S.Ct. 370, 60 L.Ed. 679; Heisler v. Thomas Colliery Co., 260 U.S. 245, 255, 43 S.Ct. 83, 84, 67 L.Ed. 237; Swiss Oil Corp. v. Shanks, 273 U.S. 407, 413, 47 S.Ct. 393, 395, 71 L.Ed. 709; Lawrence v. State Tax Commission, supra; cf. Metropolitan Casualty Insurance Co. of New York v. Brownell, 294 U.S. 580, 584, 55 S.Ct. 538, 540, 79 L.Ed. 1070.

"This restriction upon the judicial function, in passing on the constitutionality of statutes, is not artificial or irrational. A state legislature, in the enactment of laws, has the widest possible latitude within the limits of the Constitution. In the nature of the case it cannot record a complete catalogue of the considerations which move its members to enact laws. In the absence of such a record courts cannot assume that its action is capricious, or that, with its informed acquaintance with local conditions to which the legislation is to be applied, it was not aware of facts which afford reasonable basis for its action. Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function." Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 509, 510, 57 S.Ct. 868, 872, 81 L.Ed. 1245.

See, also, Garbade and Boynton v. City of Portland, 188 Or. 158, 192, 214 P.2d 1000; Campbell v. Aldrich, 159 Or. 208, 220, 79 P.2d 257.

Further than that, exact equality is not required because it is impossible of achievement.

> "There is therefore no precise application of the rule of reasonableness of classification, and the rule of equality permits many practical inequalities. And necessarily so. In a classification for governmental purposes there cannot be an exact exclusion or inclusion of persons and things. * * * And, if the constituents of each class are affected alike, the rule of equality prescribed by the cases is satisfied. In other words, the law operates 'equally and uniformly upon all persons in similar circumstances.'" Magoun v. Illinois Trust & Savings Bank, 170 U.S. 283, at page 296, 18 S.Ct. 594, at page 599, 42 L.Ed. 1037.

[5, 6] Further, where there are different classifications, all of the classifications need not be treated alike. Heisler v. Thomas Colliery Co., 260 U.S. 245, 43 S.Ct. 83, 67 L.Ed. 237; Bell's Gap R. Co. v. Commonwealth of Pennsylvania, 134 U.S. 232, 10 S.Ct. 533, 33 L.Ed. 892. Further than that, classifications may be subclassified without violating the principle of "equal protection." Carmichael v. Southern Coal & Coke Co., supra. As was stated in State ex rel. Evans v. Kozer, 116 Or. 581, at page 588, 242 P. 621, at page 623:

> " * * * Furthermore, this power of classification which is vested in the legislature implies the right to sub-classify, if there is a reasonable basis therefor. Cooley on Taxation (4th Ed.), § 365. It is unconstitutional to discriminate against certain classes without reason and without relation to the general purpose of our motor vehicle laws, but the mere fact

> that one class if favored over another is not cause for complaint. Classification implies that very thing. * * *
>
> "In Bradley v. City of Richmond, 227 U.S. 477, 33 S.Ct. 318, 57 L.Ed. 603, it is said:
>
> " 'In order to render the classification illegal, the party assailing it must show that the business discriminated against is precisely the same as that included in the class which is alleged to be favored.' "

[7, 8] We have already said that classification is exclusively a legislative problem and the legislature is not required to give any index or catalog of its reasons for the classification. See, Carmichael v. Southern Coal & Coke Co., supra; Garbade and Boynton v. City of Portland, supra. Further, in determining the constitutionality of a statute, every reasonable intendment is in favor of validity, and it should not be declared unconstitutional unless shown to be so beyond a reasonable doubt. State ex rel. Evans v. Kozer, supra, 116 Or. at page 586, 242 P. at page 622.

[9] Applying the law as above stated to the facts of the instant case, we hold that the classification established by the legislature to be reasonable and not arbitrary. We opine that the designation "water transportation companies" is sufficiently different to justify a separate and distinct classification for taxation purposes in the same way that "railroads" or "canal companies" could be separately classified. But there are two more requirements. The companies must be engaged in the business of transporting freight or passengers for hire and the transportation must be upon rivers in or adjoining the State of Oregon. Since at least one of

the involved rivers, the Columbia, is capable of supporting a great volume of river commerce, and since it borders on many counties in Oregon, it is of absolute necessity that a separate classification be created for the purpose of fairly allocating assessment of these companies on a proportionate basis to the counties in which they operate.

[10, 11] We have already noted that the statutes have reference to "water transportation companies." We construe this designation as also including individuals as well as corporations. While the word "company" usual imports a corporation, it is not so limited when applied to construction of statutes relating to taxation. Generally, a constitutional construction is to be preferred since we cannot assume that the legislature intended an unconstitutional result. Such construction has been adopted by other courts in similar cases relating to taxation. Singer Mfg. Co. v. Wright, 97 Ga. 114, 25 S.E. 249, 251, 35 L.R.A. 497; Singer Mfg. Co. v. Wright, C.C.Ga., 33 F. 121, 127; State Board of Assessors v. Central R. Co., 19 Vroom 146, 48 N.J.L. 146, 4 A. 578, 583. The cases last cited also hold that violation of the rules relating to classification does not occur by the designation of one particular type of business as constituting a separate class such as "railroad and canal companies" or "sewing machine manufacturers and agents." While there is a difference between various properties, it need not be great or conspicuous to warrant classification for taxation. Wheir v. Dye, 105 Mont. 347, 73 P.2d 209; Citizens' Telephone Co. v. Fuller, 229 U.S. 322, 331, 33 S.Ct. 833, 57 L.Ed.

1206; Keeney v. Comptroller of State of New York, 222 U.S. 525, 536, 32 S.Ct. 105, 56 L.Ed. 299, 38 L.R.A.,N.S., 1139.

[12] We now pass to plaintiffs' next contention to the effect that such statutes constitute an undue burden and restraint upon interstate commerce. As plaintiffs contends, it is a fundamental principle that under the commerce clause of the United States Constitution no state may, either directly or indirectly nor under any guise, tax the right to engage in interstate commerce, and that it makes no difference what the tax is called if it is a tax on such right. At this point attention should be called to the proposition that a tax on the right to engage in interstate commerce is a different tax than one levied and assessed on goods in interstate commerce. Plaintiffs say that here the state is attempting to tax the right rather than the goods, since the taxpayer must furnish the information required by Section 110-510, OCLA, and further, under Section 110-512, OCLA, as amended by Oregon Laws 1941, page 762, the Tax Commission may give consideration to such information, including income, indebtedness, property, both within and without the state, franchises, etc. Of course, "true cash value" is the statutory and basic rule of assessment and taxation in this state. Section 110-335, OCLA, as amended by Oregon Laws 1941, chapter 440, section 4. Various methods may be used to reach that result so long as this basic rule is followed. Robinson v. Stewart, Or., 339 P.2d 432. The "unit" or "system" method of valuation, when the total value is fairly apportioned to the commerce carried on within

the taxing state, does not result in a tax upon earnings or upon property not within the state. St. Louis Southwestern R. Co. v. State of Arkansas, 235 U.S. 350, 35 S.Ct. 99, 59 L.Ed. 265. It only offends when the method used results in a tax on property outside the state. Fargo v. Hart, 193 U.S. 490, 24 S.Ct. 498, 48 L.Ed. 761; Wallace v. Hines, 253 U.S. 66, 40 S.Ct. 435, 64 L.Ed. 782. The "system" method of assessment does not offend if it is only used to tax property within the state. Western Union Tel. Co. v. State of Missouri ex rel. Gottlieb, 190 U.S. 412, 23 S.Ct. 730, 47 L.Ed. 1116; Northern Pacific Ry. Co. v. Adams County, D.C., 1 F.Supp. 163. See, also, Knappton Towboat Co. v. Chambers, 1954, 202 Or. 618, 207 Or. 702, 276 P.2d 425, 277 P.2d 763, where there was a reversal because of a poor result with regard to a 1950 assessment under the statutes in question. However, 202 Or. at page 629, 276 P.2d at page 430, it was pointed out that such statute did not set forth a cut-and-dried formula that the tax commission must follow. It is to be noted that section 110-512, OCLA, only states that the tax commission "may take into consideration" the information required to be furnished.

[13] We hold that the furnishing of such information was for the sole purpose of enabling the commission to determine the true cash value of property within this state and for no other purpose. Since there is nothing in the record to indicate that the Tax Commission followed any system that, in fact, resulted in taxing property outside the state, it follows that the right to engage in interstate commerce was not here taxed, so far as we can determine.

[14] On the other hand, property employed in interstate commerce which has a tax situs in Oregon is subject to ad valorem taxation, and thus the imposition of such a tax does not violate either the due process clause of the Fourteenth Amendment or the Commerce clause of the United States Constitution. Ott v. Mississippi Valley Barge Line, 336 U.S. 169, S.Ct. 432, 94 L.Ed. 585. In that case Louisiana levied ad valorem taxes on vessels owned by foreign corporations which transported freight in interstate commerce up and down the Mississippi and other rivers. The owners had agents in the state, but their principal business was elsewhere and the vessels were in Louisiana a comparatively short time on each trip. Taxes were levied on a proportionate basis based on a ratio between the number of miles traveled in the state as compared with the number of miles traveled outside. In effect, it was held that this was sufficient to afford a situs for taxation on a proportional basis and hence no violation of either the Fourteenth Amendment or the commerce clause. Except for other matters we have already resolved, this disposes of plaintiffs' contention that the statutes involved cast an undue burden and restraint upon interstate commerce.

[15] Plaintiffs next contend that the statutes under attack violate the Oregon Admission Act. This statute (11 Stat. 383, 5 ORS, sec. 2, p. 1079) admitting Oregon to the Union provides as follows:

> "That the said State of Oregon shall have concurrent jurisdiction on the Columbia and all other rivers and waters bordering on the said State of Oregon so far as the same shall form a common boundary to said State, and any other State or

> States now or hereafter to be formed or bounded by the same; and *said rivers and waters, and all the navigable waters of said State, shall be common highways and forever free, as well as to the inhabitants of said State, as to all other citizens of the United States, without any tax, duty, impost, or toll therefor.*" (Italics supplied.)

It is obvious from a mere reading of this section that the words "without any tax, duty, impost, or toll therefor" simply refer to the right to travel therein without the imposition of any tax, duty, impost or toll therefor as a condition precedent to such right or as a charge for the privilege, etc. No one here contends that plaintiffs must, under this statute involved, pay their taxes before any use is made of the river. But plaintiffs say that because their franchises are taxed, the rights to the use of the river are also taxed. As previously pointed out, plaintiffs make a wrong assumption. The tax commission is not required to tax franchises, but "may" consider the same for the purpose of arriving at the proportionate value of its property in Oregon in the same way that consideration of income may to some extent be some evidence of the actual value of the thing from which income is derived. The case of Pittsburgh & Southern Coal Co. v. State of Louisiana, 156 U.S. 590, 15 S.Ct. 459, 39 L.Ed. 544, cited by plaintiffs, is not in point. That case did not involve the imposition of ad valorem taxes or any tax as a condition to the right to the use of the river. In fact, plaintiffs, at page 39 of their brief, concede that they have not yet been denied the right to the use of the river. In Cardwell v. American River Bridge Co., 113 U.S. 205, 5 S.Ct. 423,

426, 28 L.Ed. 959, relating to the California Admission Act which contained a similar provision, it was held that such provision was only a condition of admission to the Union and that such a clause was to be considered "as in no way impairing the power which the state could exercise on the subject if the clause had no existence." Further than that, it was held that the provision relating to imposition of duties or tolls, etc. was for the purpose of preventing obstruction of the river, and that the words of the statute relating to common highways must be construed along with the words "without any tax, impost, or duty therefor" as accomplishing only one object, i.e., unobstructed navigation. In Reeves v. Island Creek Fuel & Transportation Co., 313 Ky. 400, 230 S.W.2d 924, 930, where a similar problem was involved having to do with taxation of vessels owned by a foreign corporation traversing the Ohio River, it was held that, despite the Ordinance of 1787 and the Compact of Kentucky with Virginia to the effect that use of the waters of the Ohio River should be "free and common," the imposition of ad valorem taxes was "not an attempt to impose a usage tax on navigation, or a license tax, * * * or any tax because of the transportation or the right of transit through the State." See, also, cases there cited.

In consideration of the views above expressed, we hold that, in any event, there is no violation of the Oregon Admission Act.

[16] We next turn to plaintiffs' contentions that the statutes in question violate Article I, Section 32

and Article IX, Section 1, of the Constitution of Oregon relating to uniformity of operation of law and of assessment and taxation. We agree with plaintiffs to the effect that a disposition of the points already discussed control here, and hence, we find these contentions without merit.

In the case of Callender Navigation Co. v. Pomeroy, 61 Or. 343, 122 P. 758, decided in 1912, it was held that situs of boats for taxation purposes followed the residence of the owner. The early decisions of the United States Supreme Court followed this rule. See, City of St. Louis v. Wiggins Ferry Co., 11 Wall. 423, 20 L.Ed. 192; Hays v. Pacific Mail Steamship Co., 17 How. 596, 15 L.Ed. 254; Morgan v. Parham, 16 Wall. 471, 21 L.Ed. 302. That is not the rule of law that now governs and as announced in Ott v. Mississippi Valley Barge Line, supra. Hence, Callender Navigation Co. v. Pomeroy, supra, insofar as it conflicts herewith is overruled.

The judgment and decree of the trial court is affirmed, each party to pay their own costs and disbursements.

SLOAN, J., did not participate in the decision of this case.

The decree of the trial court reads as follows:

(Title of court and cause)

This matter having come before this Court for final hearing, and the Court having carefully reviewed the pleadings, the stipulations as to the facts, the exhibits, the transcript of proceedings taken before the Honorable Rex Kimmell on December 12, 1951, and having carefully considered the briefs and oral arguments of the parties and the law, and the Petition for Reconsideration filed by the plaintiffs after the rendering by this Court of its Memorandum Opinion, and now being fully advised, and no party having requested the entry of findings of fact or conclusions of law, except that the plaintiffs requested the court to make a finding with respect to the residence of the plaintiff Wilbur J. Smith and the court refused to make such finding for the reason that in the opinion of the court the residence of Wilbur J. Smith was immaterial to the issues involved.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Chapters 405, 413 and 414 of Oregon Laws, 1949, and the prior laws of which they are amendatory, insofar as they impose a tax upon the tugs, barges and vessels of plaintiffs and plaintiffs in intervention, do not violate the Fourteenth Amendment to the United States Constitution; do not violate Section 32, Article I or Section 1, Article IX of the Oregon Constitution; do not violate paragraph 3, Section 8, Article I of the United States Constitution; and do not violate Section 2 of the Oregon Admissions Act (11 Stat. 383).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the temporary injunction issued by the Honorable Rex Kimmell on September 11, 1953 be and the same hereby is continued in full force and effect for a period of 60 days from and after the date of entry of this decree.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiffs, and each of them, shall not remove any of their property from the State of Oregon, including all tugs, barges, vessels or other floating equipment except in the ordinary course of business, during said 60-day period for the purpose of avoiding payment of any taxes, interest or charges which have been assessed, levied or charged against plaintiffs or any of their property.

Dated this 26th day of February, 1957.

LESTER W. HUMPHREYS
Circuit Judge Pro Tem

The decree of the Supreme Court of the State of Oregon reads as follows:

BE IT REMEMBERED, that at a regular term of the Supreme Court of the State of Oregon, begun and held at the court room in the city of Salem on the first Monday, the 2nd day of MARCH, 1959. WHEREUPON on this WEDNESDAY, the 17th day of JUNE, 1959, the same being the 22nd judicial day of said term, there were present:

Wm. M. McAllister, Chief Justice,
George Rossman, Associate Justice,
Hall S. Lusk, Associate Justice,
Harold J. Warner, Associate Justice,
William C. Perry, Associate Justice,
Gordon W. Sloan, Associate Justice,
Kenneth J. O'Connell, Associate Justice,
F. M. Sercombe, Clerk,

when the following proceedings were had:

(Title of cause)

This cause on May 21, 1959, having been duly argued and submitted upon and concerning all questions arising upon the transcript of record and then reserved for further consideration; and the court having fully considered all said questions as well as suggestions of counsel in their argument and briefs finds there is not error as alleged.

IT IS THEREFORE CONSIDERED, ORDERED and DECREED that the decree of the court below rendered and entered in this cause be and the same is in all things affirmed.

IT IS FURTHER ORDERED that each party will pay his or its own costs and disbursements.

IT IS FURTHER ORDERED that this cause be remanded to the court below from which the appeal was taken with directions to enter a decree in accordance herewith.

APPENDIX B

(a) The applicable provisions of the United States Constitution are:

Article I, Section 8, Clauses 3 and 18:

> "The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes; * * * To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Consitution in the Government of the United States, or in any Department or Officer thereof."

Amendment XIV, Section 1 of the Constitution of the United States:

> " * * *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; * * * "

(b) The Oregon Admission Act, 11 Stat. 383, Volume 5, Oregon Revised Statutes, Section 2, Page 1079, reads as follows:

> "Section 2. *Jurisdiction over waters forming boundary of state; use of navigable waters as free highways.* That the said State of Oregon shall have concurrent jurisdiction on the Columbia and all other rivers and waters bordering on the said State of Oregon, so far as the same shall form a common boundary to said State, and any other State or States now or hereafter to be formed or bounded by the same; and said rivers and waters, and all the navigable waters of said State, shall be common highways and forever free, as well as to the inhabitants of said State as to all other citizens of the United States, without any tax, duty, impost, or toll therefor."

(c) The following Oregon statutes are involved in this appeal:

Chapter 405, Oregon Laws 1949 reads in part as follows:

> "Section 2. That section 110-313, O.C.L.A., as amended by section 1, chapter 263, Oregon Laws 1945, be and the same hereby is amended so as to read as follows:
>
> Sec. 110-313. 1. Except as otherwise provided by law, all ships and vessels whose home ports of registry or enrollment are in the state of Oregon, other than such as are assessed by the state tax commission, shall be assessed at 10 per cent of the true cash value thereof; provided, however, that ships and vessels in intercoastal or foreign trade, whether actually engaged therein or laid up, shall be assessed at 1 per cent of the true cash value thereof; and provided further, that to and including the year 1951 the same rule of 1 per cent shall apply to ships and vessels which may be under original construction at the assessment date of any year, but such rule shall not apply to materials not actually in place as the constructed part of any such ship or vessel. * * *
>
> Section 3. That section 110-543, O. C. L. A., be and the same hereby is amended so as to read as follows:
>
> Sec. 110-543. The term "property", as used in this act, shall be deemed to include all property, real and personal, tangible and intangible, subject to assessment for taxation under this act, belonging to the company, or held by it as occupant, lessee, or otherwise, and shall include the lands and buildings, rights of way, roadbed, water powers, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph, telephone, and transmission lines, poles, wires, conduits, switchboards, machinery, appliances, appurtenances, docks, watercraft and all other prop-

erty of a like or different kind, used in carrying on the business of said company, and owned, leased, or operated by it, and all other real and personal property and all franchises and special franchises; provided, however, that this definition does not include, apply to, or subject to assessment for taxation by said commission, such real estate as is owned and can be conveyed by such company under the laws of this state, which is not actually occupied in the exercise of its franchise, or in use in the operation of its corporate business. All land of any railroad, logging road, or street railway, occupied and claimed exclusively as right of way, with all the tracks and substructures and superstructures which support the same, together with all sidetracks, second tracks, turnouts, station houses, depots, roundhouses, machine shops, or other buildings belonging to the company and used in the operation thereof, without separating same into lands and improvements, shall be deemed to be real property and the rolling stock and all other property shall be deemed to be personal property and, without especially defining and enumerating it, all land of any water transportation company, airplane company, pipe line company, toll bridge company, electric light and power company, telephone company, telegraph company, water company, gas company, heating company or other company similarly assessed, and all docks, hangars, landing fields, exchanges, office buildings, bridges, power plants, dams, reservoirs, substations, relay stations, telegraph, telephone, or transmission and distribution lines located upon property owned by it, and all other buildings, structures, improvements or fixtures of a permanent character thereon, belonging to the company and used in the operation thereof, shall be deemed to be real property, and all other property shall be deemed to be personal property.

Section 4. That section 110-544, O. C. L. A., be and the same hereby is amended so as to read as follows:

Sec. 110-554. The term "property having situs in this state," shall include all property, real and personal, of the companies included in this act, owned, leased, used, operated or occupied by them, and also such proportion of the watercraft, rolling stock, cars, and other personal property of a like or different kind as is used partly within and partly without the state as herein provided to be determined."

Chapter 413, Oregon Laws 1949, reads as follows:

"Section 1. That section 110-516, O. C. L. A., be and the same hereby is amended to read as follows:

Sec. 110-516. For the purpose of determining the respective amounts of the assessment of any company, under the provisions of this act, that shall be apportioned to the several counties in this state, into or through which the rail lines of said company extend or are operated, the state tax commission shall multiply the values per mile, as above ascertained, of the several main and branch lines by the number of miles of such main and branch lines, respectively, including miles of main tracks, spurs, yard tracks and side tracks, in each of the counties, as reported by said company, or as otherwise ascertained and determined by said commission. Values distributed over wire or pipe lines, as aforesaid, shall be apportioned to the counties in which such lines are situated by multiplying the rate per mile in each case, determined as aforesaid, by the number of miles of said wire or pipe lines in said counties, respectively. If the property of any company assessable under the provisions of this act is of such a character that its value can not reasonably be apportioned on the basis of rail, wire or pipe line mileage, said commission may adopt such other method or basis of apportionment to the county or counties in which said property is situated as may be feasible and proper. As deter-

mined by said commission values of electric power plants and water powers, connected with or used in the operation and business of any company, assessable under the provisions of this act, may be apportioned to the counties in which the same are situated, in such manner as said commission may deem to be reasonable and fair. Assessments of aircraft companies shall be allocated and appor tioned to those counties only in which such aircraft companies make regular service landings. Assessments of water transportation companies shall be allocated and apportioned to those counties which border upon the rivers navigated by such companies."

Chapter 414, Oregon Laws 1949, reads in part as follows:

"It shall be the duty of the said state tax commission:

* * *

14. To make an annual assessment, upon an assessment roll to be prepared by said commission, of the property having a situs in this state, as hereinafter defined, of all railroad companies, sleeping car companies, union station and depot companies, electric and street railway companies, express companies, telegraph companies, telephone companies, refrigerator car companies, tank line companies, private car companies, pipe line companies, toll bridge companies, heating companies, water, gas and electric companies, people's utility districts, aircraft companies engaged in air transport of passengers, freight, express or mail and water transportation companies engaged in the business of transporting freight or passengers for hire upon the rivers in or adjoining the state of Oregon."

Chapter 440, Oregon Laws 1941, reads in part as follows:

"Section 12. That section 110-510, O. C. L. A., be and the same hereby is amended so as to read as follows:

Sec. 110-510: The several companies enumerated in this act, doing business in this state, hereby are required to make and file with the state tax commission, on or before the first day of February of each year, in such form and on such blanks as said commission may provide, a statement, under oath, to be made by the president, secretary, treasurer, superintendent, or chief officer of such company, covering a period of at least one year and not exceeding five years, as may be required by such commission, provided, however, that class I railroads, Class A electric companies, class A telephone companies, telegraph companies and sleeping car companies shall be required to file such statement on or before the fifteenth day of March of each year. Each such statement shall contain the following facts: 1. The name of the company, the nature of the business conducted by the company, and under the laws of what state or country it is organized; the location of its principal office; the name and postoffice address of its president, secretary, auditor, treasurer, superintendent, and general manager; the name and postoffice address of the chief officer or managing agent or attorney in fact in Oregon.

2. The number of shares of capital stock.

3. The par value and market value, or actual value if there be no market value, of the shares of stock on the first day of January at the hour of 1 o'clock a. m. of the year in which the report is made.

4. The bonds and other corporate obligations owing by the company.

5. The par value and market value, or actual value if there be no market value, of the bonds

or other obligations owing by the company on the first day of January at the hour of 1 o'clock a. m. of the year in which the report is made.

6. A detailed statement of the real property owned by the company in Oregon, where situated and the value thereof.

7. A detailed statement of the personal property, including money and credits, owned by the company in Oregon on the first day of January at the hour of 1 o'clock a. m. of the year in which the report is made, where situated and the value thereof.

8. The total value of the real estate owned by the company situated outside of the state.

9. A full and complete statement of the cost and actual present value of all buildings of every description owned by said company within the state.

10. The total value of the personal property of the company situated outside of Oregon.

11. The total length of the company's lines, the length of its lines within the state of Oregon, and also the length of its lines without the state of Oregon, including those which said company controls or uses as owner, lessee or otherwise.

12. A statement of the number of miles of main line, branch lines, double track, spurs, yard tracks and side tracks, owned or leased by said company in each county in this state, and each municipal subdivision thereof, stated separately.

13. A statement in detail of the entire gross receipts and net earnings of the company from all sources, stated separately, for the fiscal year next preceding the date of the report.

14. Such other facts or information as said commission may require in the form of return prescribed by it. The commission hereby is given the power to prescribe directions, rules and regulations to be followed in answering any requirement of this act.

* * *

Section 14. That section 110-512, O. C. L. A., be and the same hereby is amended so as to read as follows:

Sec. 110-512. It shall be the duty of the said state tax commission to prepare each year an assessment roll, in which shall be assessed, as of the first day of January at the hour of 1 o'clock a. m. of such year, the true cash value of all the properties of the several companies subject to taxation under this act, which said assessment roll shall not be final until reviewed as herein provided. For the purpose of arriving at the amount and character and true cash value of the property belonging to any such company, the said commission personally may inspect such property, and may take into consideration the statements filed under this act, the reports, statements or returns of said company filed in the office of any board, office or commission of this state, or any county thereof, the earning power of said company, the franchises and special franchises owned or used by said company, and such other evidence of any kind as may be obtainable bearing thereon; provided, that in no event shall any report, statement or return be conclusive upon said commission in arriving at the amount and character and true cash value of the property belonging to any such company. When any company owns, leases, operates or uses rail, wire or pipe lines or property within and without this state, if the commission shall value the entire property within and without this state as a unit, it may ascertain the property subject to taxation in Oregon by the proportion which the number of miles of rail, wire, or pipe lines in Oregon, controlled or used by said company, as owner, lessee, or otherwise, bears to the entire mileage of rail, wire or pipe lines, controlled or used by said company, as owner, lessee, or otherwise. If the value of any property having a situs in this state, of a company operating both within and without the state, cannot fairly be determined in the above

manner, said commission may use any other reasonable method to determine the proper proportion of the entire property assessable for taxation in this state."

O.C.L.A., Section 110-513 reads as follows:

"Unit valuation of property: Deductions for property out of state and for assessments by county assessors: Duty of assessors. The said commission, for the purpose of arriving at the actual cash value of the property assessable by it, as herein provided, may value the entire property, both within and without the state of Oregon, as a unit. In case it shall value the entire property as a unit, either within or without the state of Oregon, or both, the commission shall make deductions of the property of said company situated outside of the state, and not connected directly with the business thereof, as may be just, to the end that the fair proportion of the property of the said company in this state may be ascertained. If the said commission value the entire property within the state of Oregon as a unit, it shall make deductions of the property of said company situated in Oregon, and assessed by the county assessors, to an amount that shall be just; and for that purpose the county assessors shall be and they are hereby required, if the said commission request the same, to certify to the said commission the assessable value of the property of said companies assessable by them, but such certification of assessed or assessable value is intended to be advisory only, and not conclusive upon the said commission."

Section 110-312, O.C.L.A., as amended by chapter 405, Oregon Laws 1949, provided in part as follows:

"Except as otherwise specifically provided, all personal property shall be assessed for taxation each year at its situs as of the day and hour of assessment prescribed by law; provided, that boats, vessels, or other watercraft registered or enrolled within this

state, except such as are assessed by the state tax commission, shall be assessed in the county of such registry or enrollment."

The general Oregon property tax covered the vessels situated in Oregon of those not assessed by the state tax commission:

Section 110-101, O.C.L.A., provided as follows:

"All real property within this state and all tangible personal property situated within this state, except as otherwise provided by law, shall be subject to assessment and taxation in equal and ratable proportion."

Section 110-103, O.C.L.A., provided in part:

"The term 'tangible personal property' means and includes all chattels and movables, such as boats and vessels, * * * "